FILED
AUG 24 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-190

IN THE

# SUPREME COURT OF THE UNITED STATES

October Term, 1987

FRANK MARTIN, - - - - - Petitioner,

*versus*

ST. JOE CONTAINER COMPANY, - - Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

## BRIEF OF ST. JOE CONTAINER COMPANY, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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FRANK MARTIN, - - - - - *Petitioner,*

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ST. JOE CONTAINER COMPANY, - - *Respondent.*

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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## BRIEF OF ST. JOE CONTAINER COMPANY, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## COUNTERSTATEMENT OF THE CASE

This case arose in 1982 from the decision of Respondent, St. Joe Container Company (St. Joe or Company), to discharge Petitioner Frank Martin. Martin was terminated for insubordination after he disobeyed a direct order of his supervisor concerning how to operate the machine on which he worked. Martin had been terminated twice before for failing to follow his supervisor's orders and had been suspended nine times during his employment.[1] (J.A. 78)[2]

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[1]Pursuant to Supreme Court Rule 28.1, St. Joe Container Company is a wholly-owned subsidiary of St. Joe Paper Company. No other publicly owned corporation has a financial interest in the outcome of this case.

[2]All citations so designated are to the Joint Appendix which is a part of the record before the Sixth Circuit Court of Appeals.

Martin filed a grievance pursuant to the collective bargaining agreement in effect at the Company. The grievance alleged that Martin's discharge was not for just cause. The grievance was carried to arbitration. On July 28, 1983, Arbitrator Theodore High rendered a decision finding that Martin's discharge was for just cause. (J.A. 100-105).

In October, 1983, Martin filed this action in state court under Kentucky's Civil Rights Act, KRS Chapter 344, claiming that his discharge was because of his race or in retaliation for his prior EEOC charges. (J.A. 55-57). The action was subsequently removed to Federal Court on diversity grounds.

The Company moved for summary judgment on June 5, 1984. (J.A. 71-143). The District Court granted the Company's Motion on April 28, 1986. (J.A. 213-220; Petition For Writ of Certiorari, pp. 44-54). The Court concluded that Martin failed to establish his qualifications for the position from which he was terminated and, thus, failed to establish a prima facie case of race discrimination. The Court further held that even if Martin had established a prima facie case, he failed to produce any evidence demonstrating that the Company's articulated reasons for his termination were pretextual. (J.A. 213-220).

Martin filed a Notice of Appeal on May 20, 1986. After briefs were filed and oral argument was held, the Sixth Circuit Court of Appeals affirmed the grant of summary judgment. Specifically, the Sixth Circuit Court of Appeals found that Martin "failed to estab-

lish the existence of a factual issue which could have reasonably been

> " 'resolved in favor of either party,' *Liberty Lobby,* 106 S. Ct. at 2511; see *Celotex Corp.,* 106 S. Ct. at 2553; Fed. R. Civ. P. 56(e), concerning whether his discharge was racially motivated." (Petition for Certiorari, p. 62).

Martin has now petitioned this Court to review the Sixth Circuit Court of Appeals' Decision.

## SUMMARY OF ARGUMENT

Supreme Court Rule 17.1 states that certiorari will be granted "only when there are special and important reasons therefor." Martin's Petition for Certiorari presents no special or important reasons that would justify the granting of certiorari in this case. Specifically, the questions presented for review do not represent departures from the "accepted and usual course of judicial proceedings" as Martin claims. The District Court properly granted summary judgment on the basis that Martin provided no evidence which would create an inference that he was terminated because of his race. The Sixth Circuit Court of Appeals properly affirmed.

## ARGUMENT

### The Petition Should Be Denied Because Petitioner Can Show No Special Or Important Reason For Granting Certiorari As Required By Supreme Court Rule 17.1.

Petitioner poses three questions for review. Each concerns the propriety of the District Court's decision

to grant summary judgment in this case and the Sixth Circuit Court of Appeal's affirmance of that decision. The questions presented for review are whether a court may ignore a plaintiff's reasonable interpretation of evidence; may grant summary judgment without allowing the plaintiff to complete discovery, and grant summary judgment while ignoring certain of plaintiff's claims.

Supreme Court Rule 17.1 sets forth those considerations which govern the granting of certiorari. Initially, the Rule provides that certiorari "will be granted only when there are special and important reasons therefor." Martin relies exclusively on the grounds stated in Rule 17.1(a):

> "When a federal court of appeals . . . has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision."

This case is not appropriate for review pursuant to the standards of Rule 17.1(a).

Martin first claims that both of the lower courts "departed from the accepted and usual course of judicial proceedings" by "refusing to consider the Plaintiff's more logical interpretation of the evidence of record." (Petition, p. 33).[3] Both the District Court

[3]The Petition for Certiorari, including the decisions of the two lower courts, which are appended thereto, will be referenced by enclosing "Petition" and the appropriate page number in parentheses.

and the Sixth Circuit Court of Appeals (a total of four federal judges), considered Martin's alleged evidence of race discrimination and found it insuffiicient to preclude summary judgment. Martin is simply attempting to obtain a third bite of the apple with this Petition for Certiorari. Providing a third review of the sufficiency of the evidence of record is not an exercise of this Court's "supervisory powers" within the meaning of Rule 17.1(a).

Most certainly, the Court's rejection of Martin's "interpretation of the evidence" is not a departure from the "accepted and usual course of judicial proceedings" calling for the exercise of this Court's supervisory powers. Both Courts properly reviewed Martin's alleged evidence of race discrimination under the evidentiary standards established by this Court in *McDonnell Douglas Corp.* v. *Green*, 411 U. S. 792 (1973) and its progeny. They both found it lacking. There is no basis for disturbing the lower courts' decisions on this issue.

Martin further contends that certiorari should be granted because the District Court "erroneously thought that [plaintiff] was required to submit direct evidence of discriminatory intent." (Petition, p. 34). The District Court imposed no such requirement. As stated in the District Court's Memorandum granting summary judgment:

> "Of course, a race discrimination plaintiff need not present direct evidence of discrimination; it is sufficient to present facts from which an infer-

> ence can be drawn. However, such an inference may not be drawn in this case." (Petition, p. 53).

There is no indication that either the District Court or the Sixth Circuit Court of Appeals "misunderstood or misapplied" the parties' respective burdens under Title VII of the Civil Rights Act, 42 U.S.C. Sec. 2000e *et seq.* Martin's contention to the contrary is factually baseless.

Martin also requests this Court to grant certiorari to "nip[ping] in the bud the lower courts' *probable propensity* to use" *Anderson* v. *Liberty Lobby, Inc.*, — U. S. —, 106 S. Ct. 2505 (1986) and *Celotex Corp.* v. *Catrell*, — U. S. —, 106 S. Ct. 2548 (1986) as a basis for improperly dismissing weak cases. Martin, however, does not argue that *Anderson, supra,* or *Celotex, supra,* were misapplied, in this case. This is because the lower courts correctly applied the two cases. Martin's only argument is that the courts may in the future misapply *Anderson* or *Celotex.* How the federal courts may apply these two cases in the future is irrelevant. Martin has petitioned for certiorari in this case where *Anderson* and *Celotex* were properly interpreted and applied.

The second question Martin presents for review is whether a federal court may grant summary judgment before a plaintiff completes discovery. Martin's question is misleading since the answer depends on the circumstances of the case. This action was filed in October, 1983. The Company moved for summary judgment in June, 1984. Summary judgment was

granted on April 28, 1986 — two and a half years after the action was filed.

Martin's argument that the District Court departed from the "accepted and usual course of judicial proceedings" by granting summary judgment when he wanted to conduct further discovery, is without merit. Martin cannot blame the Court for his failure to conduct additional discovery. Rather, it is his fault.

Martin responded to the Company's motion for summary judgment contending he had produced sufficient evidence of race discrimination to preclude summary judgment. If he needed additional discovery, he should have availed himself of the procedures contained in Rule 56(f) of the Federal Rules of Civil Procedure. Rule 56(f) provides that in response to a motion for summary judgment a party may request the Court to order a continuance so discovery can be taken. In addition, nothing precluded Martin from conducting discovery while the motion for summary judgment was pending.

Martin had more than sufficient opportunity to conduct discovery. The District Court's decision to grant summary judgment despite Martin's request for additional discovery was proper under the circumstances. In no event does the District Court's decision in this regard rise to the level of a departure from the "accepted and usual course of judicial proceedings." Rather, it was a matter of judicial discretion.

The third question presented for review by Martin is whether a federal court can grant summary judg-

ment in a case involving "multiple claims while completely ignoring all but one of the claims." (Petition, p. i). Again, Martin's phrasing of the question is misleading. Of course, a federal court cannot just ignore a claim and grant summary judgment. However, this is not what happened in this case.

Martin had two claims: retaliation and race discrimination. (J.A. pp. 55-57). He contends that the Company did not request the Court to dismiss the retaliation claim, but that the Court did so without giving it any consideration. Martin's first statement is incorrect. The Company specifically stated in its Memorandum of Law In Support of Summary Judgment:

> "Defendant is entitled to summary judgment on the issue of whether he was discharged because of his race or in retaliation for his prior filing of EEOC charges." (J.A. p. 98).

Martin, in responding to the motion for summary judgment, did not address his retaliation claim. He provided no evidence to support such a claim. (J.A. pp. 145-160 and 192-198).

The District Court granted summary judgment of the entire case. The Court did not specifically address Martin's retaliation claim. However, it was not required to do so under Rule 52(a) of the Federal Rules of Civil Procedure. That Rule states:

> "Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b)."

In light of Martin's failure to provide any evidence in support of his retaliation claim, it is not surprising that the District Court made no findings of fact and conclusions of law with respect to it. The District Court's failure to make such a finding or a conclusion clearly is not a departure "from the accepted and usual course of judicial proceeding." If anything, it should have been expected under the circumstances.

Supreme Court Rule 17.1 provides that certiorari will be granted "when there are special and important reasons therefor." Martin's Petition for Certiorari presents no "special and important reasons" justifying the granting of certiorari. The questions Martin presents for review are insubstantial and represent nothing more than his disagreement with the lower Courts' analysis of this case. There is no basis for the granting of certiorari.

## CONCLUSION

In light of the foregoing, St. Joe Container Company requests that this petition be denied.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing has been served by mail pursuant to Supreme Court Rule 28.3 upon Philip C. Kimball, Attorney for Petitioner, 200 Kennedy Avenue, Louisville, Kentucky 40206 on this 24 day of August, 1987.

Attorney for Respondent